

December 15, 2011

Michael R.W. Houston
Cummins & White, LLP
2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0764

Re: Your Request for Informal Assistance
Our File No. I-11-176

Dear Mr. Houston:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹ Because your questions seek general guidance, we are treating your request as one for informal assistance.² This letter should not be construed as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A).) In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

(1) May the Technology Leadership Political Action Committee (the “TLPAC”) open a second bank account, so that it can continue to operate and accept contributions and make expenditures, considering that the committee does not have access to its current account, which has been frozen by the First California Bank in response to a federal investigation of the committee’s treasurer Kinde Durkee?

(2) Assuming the TLPAC opens a second bank account and continues to engage in campaign activity, are there any additional rules to which the TLPAC must adhere to in light of the federal investigation of Ms. Durkee?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSIONS

(1) The Act does not preclude a non-candidate controlled committee from opening a second bank account, so that it can continue to operate and accept contributions and make expenditures.

(2) The TLPAC must continue to adhere to all provisions of the Act and Commission regulations. Generally, we can only advise that the committee's subsequent treasurer must take all reasonable steps necessary to fully disclose campaign activity based on the information available or that becomes available. Misappropriated funds and funds inaccessible because of the interpleader action should be reported as detailed below.

FACTS

You are the legal counsel for the Technology Leadership Political Action Committee (the "TLPAC"), which is a non-candidate controlled committee. The TLPAC's treasurer, which the TLPAC plans to replace if they have not done so already, is Kinde Durkee and her company Durkee and Associates. Through her company, Ms. Durkee managed all reporting and interaction with the bank at which the TLPAC's campaign bank account is held, the First California Bank.

Kinde Durkee is now under investigation by the Federal Bureau of Investigation for the possible misappropriation of campaign funds. In response to this investigation, the First California Bank, at which a majority of the approximately 400 committee bank accounts under Ms. Durkee's control are maintained, has continued to refuse committees access to their accounts. Instead, the bank has filed an interpleader action in Los Angeles County Superior Court asking the court to allocate the balance of the remaining funds held in Ms. Durkee's numerous accounts.

Attempts to contact the First California Bank have been unsuccessful, and the bank has been entirely non-responsive to requests to provide information regarding the TLPAC's account or access to the account. Previously, you have been informed by a representative of the bank that the account had been frozen and that no records or access to the account would be granted unless the committee signed a waiver and release of rights the committee may have to claims against the bank.

ANALYSIS

(1) May the TLPAC open a second bank account, so that it can continue to operate and accept contributions and make expenditures?

While Section 85201 of the Act sets forth the "one-bank account rule," this rule is applicable only to candidate committees for elective office. The Act does not preclude a non-candidate controlled committee from opening a second bank account, so that it can continue to operate and accept contributions and make expenditures under the circumstances you have described.

(2) Assuming the TLPAC continues to engage in campaign activity, are there any additional rules to which the TLPAC must adhere?

Generally, the TLPAC must continue to adhere to all provisions of the Act and Commission regulations. Where compliance is found to be impossible due to the investigation of Ms. Durkee, you should seek additional assistance by providing the Commission with specific facts under which you believe the committee cannot comply with existing provisions.

To continue campaign activity, the Act does require each committee to designate a treasurer and that the treasurer, or the treasurer's designated agent, authorizes any expenditure made by, or on behalf of, the committee. (Regulation 84100.) Because you have indicated that the TLPAC is seeking to replace Ms. Durkee as the committee's treasurer, we note that the TLPAC may engage in campaign activity only to the extent that the TLPAC has a designated treasurer.³

In regard to reporting requirements, the committee's treasurer must verify the committee's campaign statement under the penalty of perjury. (Sections 81004.) As you plan to replace Ms. Durkee as the committee's treasurer, the subsequently designated treasurer will need to verify any future campaign statements. Pursuant to Regulation 18427(a) the designated treasurer must (1) verify that to the "best of their knowledge" the committee's campaign statements are "true and complete" and (2) use "all reasonable diligence" in the preparation of the statements. Considering the potential for missing or incomplete records resulting from Ms. Durkee's alleged breach of her duties to the committee and the subsequent actions of the First California Bank, we can only advise that the committee's subsequently designated treasurer must take all reasonable steps necessary to fully disclose campaign activity based on the information available or that becomes available.

Nonetheless, we do offer limited assistance regarding the reporting of allegedly misappropriated funds and funds inaccessible because of the interpleader action. Funds believed to be misappropriated, and for which the committee has no knowledge of how the funds were expended, should be reported as an expenditure with a short description stating that the funds are believed to have been misappropriated by the former campaign treasurer. Albeit involuntarily made, campaign funds inaccessible because of the interpleader action should be reported as an expenditure made to the court with a short description that the funds have been deposited by the bank with the court under the interpleader action. Subsequently, the disputed funds should be

³ Pursuant to Section 84103, the committee must file an amendment to its statement of organization (Commission Form 410) identifying the name of the subsequent treasurer within 10 days of his or her designation, or within 24 hours if the designation occurs within the 16 days before an election in connection with the committee.

reported as a cash equivalent until final disposition in the interpleader action (see Regulation 18421), at which time any recovered funds should be reported as a miscellaneous increase to cash.⁴

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Brian G. Lau
Counsel, Legal Division

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⁴ In other words, the cash on hand reported on line 16 of the summary sheet of a committee's campaign statement (Form 460) should reflect the actual cash available to the committee. Inaccessible funds deposited with the court under the interpleader action should not be included in cash on hand until the action is completed and any funds are recovered.